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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/846,766	04/30/2001	James Talaric	4-01	4613

23713 7590 01/13/2006

GREENLEE WINNER AND SULLIVAN P C  
4875 PEARL EAST CIRCLE  
SUITE 200  
BOULDER, CO 80301

EXAMINER
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NUTTER, NATHAN M

ART UNIT	PAPER NUMBER
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1711

DATE MAILED: 01/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/846,766	Applicant(s) TALARIC ET AL.	
	Examiner Nathan M. Nutter	Art Unit 1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2005.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-29 and 47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 and 47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 April 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This application has been re-assigned to Examiner Nathan M. Nutter in Art Unit 1711. All inquiries regarding this application should be directed to Examiner Nutter at telephone number 571-272-1076.

#### ***Response to Amendment***

In response to the amendment filed 31 October 2005, the following is being placed in effect.

The rejection of claims 9-11 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention is hereby expressly withdrawn.

The rejection of claims 1-29, 46 and 47 under 35 U.S.C. 103(a) as being unpatentable over Graefe (US 5,002,475) in view of Kennedy, III et al (US 6,290,614) and Hirai et al (US 4,367,307) is hereby expressly withdrawn.

New grounds of rejection will follow.

#### ***Declaration Under 37 CFR 1.312***

The Declaration of James Barber, filed 31 October 2005, has been considered. The Declaration is not deemed to have any value determinative of the patentability of the instant claims since the "polymer mix" referred to at the second full paragraph of page 2 thereof is neither disclosed, taught or suggested, nor is the term a proper art-recognized term to which members are readily known. The assertions of the Declaration do not seem well-founded since the formulations of what "Uncolored original" and

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"Uncolored original with added pigment," are neither disclosed, nor taught. The pigments employed are not shown, as well. Declarant Barber does not appear to be making a proper comparison since it cannot be ascertained what is actually being compared. The Declaration will be given no weight in determining the patentability of the instant claims.

### ***Claim Interpretations***

In claim 1, the term "garden furniture" is deemed to be specific to the recited term "furniture." As such, the second recitation is deemed to be redundant.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 25 and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Examiner is at a loss to understand the recitation of "skin color" in claims 25 and 27. This feature appears to vary with each person and does not appear to be uniform or standardized. Further, the skin color of a dog differs from the skin color of other mammals, and the skin color of a frog would not be suitable for a mannequin. As such, the metes and bounds of such a recitation cannot be ascertained from the claims or Specification, as filed.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-29 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roberts (US 3,655,861), Moody (US 6,200,233), Kiyosawa et al (US 6,187,514), in further view of Hashimura et al (US 6,494,543) and Philpot et al (US 6,352,485), all newly cited.

All of the references cited, Roberts (US 3,655,861), Philpot et al (US 6,352,485), Moody (US 6,200,233), Kiyosawa et al (US 6,187,514), Hashimura et al (US 6,494,543), and Philpot et al (US 6,352,485), teach the manufacture of hollow articles comprising a "thermosetting elastomeric material" with a "dye or pigment other than carbon particles mixed therein, as recited and claimed herein.

The reference to Roberts (US 3,655,861) shows the use of thermoset elastomers, including polyurethane rubber, that may be rotational molded to produce hollow articles, including furniture, as recited and claimed herein. Note column 3 (lines 4-33), column 11 (lines 14-33), column 13 (lines 1-8) for the polyurethane rubbers employed. The reference suggests the inclusion of pigments at column 13 (lines 35 et seq.) in their formulations. The patent employs a rotational molding process to produce

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hollow articles, as recited herein. Note column 4 (lines 51-66) and column 14 (lines 24-33).

The patent to Moody (US 6,200,233) teaches the full incorporation of a pigment into the elastomer that makes up the article. Note the paragraph bridging column 10 to column 11 and column 12 (lines 13-33). At column 10 (lines 28-47) the reference shows the employment of a thermosetting polyurethane elastomer, as claimed herein. The patent shows cavitation of the article at column 12 (lines 34-52) which embraces the concept as defined by applicant at page 10 of their response.

The patent to Kiyosawa et al (US 6,187,514) teaches the manufacture of a hollow article that may be produced from a thermosetting polyurethane elastomer, as recited. Note column 3 (lines 40-45). The paragraph bridging column 3 to column 4 shows the hollow article as defined by applicant. The addition of a colorant is shown at column 4 (lines 17 et seq.).

The reference to Hashimura et al (US 6,494,543) is relied upon solely to show the use of organic pigments and dyes as suitable for inclusion into an elastomeric composition useful to manufacture hollow articles. Note column 2 (lines 48-51).

The reference to Philpot et al (US 6,352,485) shows the production of hollow articles, including furniture, that may comprise urethane resins. Note the paragraph bridging column 3 to column 4 and column 5 (lines 35-44). The reference is clear at column 5 (lines 18-34) and especially at column 6 (lines 13-53) that a skilled artisan would know how to manipulate desirable physical characteristics including coloration, as well as "flexibility, strength and density." Further note the paragraph bridging column 6

to column 7 for manipulation of toughness, flex/rebound, and strengthening or stiffness of the manufactured article. Finally, note column 8 (lines 13-24) for processability of the final product.

As such, the references teach the manufacture of hollow articles, from thermosetting polyurethane resins, as herein claimed, to be known in the art. Inclusion of a colorant of a pigment or dye, including organic pigments and dyes, is shown by the references to be known, including the use of an organic dye or pigment. It would be assumed that the mixing of the polymer and the various additives that may be employed would be uniform. It has not been shown why one would not expect this to be so. The use of rotational molding is taught as suitable for these thermosetting polyurethane elastomers. A skilled artisan would know how to manipulate desirable physical characteristics as shown by the references. Although the references, taken singly do not disclose all of the features of the instant claims, taken together they show that the features are all known and can be manipulated for desired effect. Nothing unexpected has been shown on the record regarding any of the features claimed. As such, the manufacture of the hollow articles, using a colorant, as claimed, is deemed to be conventional and shown by the combination of references cited.

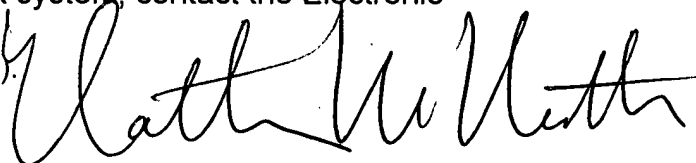
In view of the new ground of rejection, this action is not being made FINAL.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan M. Nutter whose telephone number is 571-272-1076. The examiner can normally be reached on 9:30 a.m.-6:00 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Nathan M. Nutter  
Primary Examiner  
Art Unit 1711

nmn

8 January 2006